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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MITSUI SUMITOMO INSURANCE CO. LTD. :

Plaintiff, : 07 Civ. 3874 (CM)

- against -

: **PLAINTIFF’S NOTICE OF**  
: **MOTION FOR PARTIAL**  
EVERGREEN MARINE CORPORATION; : **SUMMARY JUDGMENT**  
UNION PACIFIC RAILROAD COMPANY;

Defendants.

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PLEASE TAKE NOTICE that upon plaintiff’s statement of undisputed facts pursuant to Local Civil Rule 56.1(a), plaintiff’s memorandum of law, the declarations of Chikara Yokoi and David Clifton, and the affidavit of David L. Mazaroli, the accompanying exhibits, and all prior pleadings and proceedings herein, pursuant to Rule 56 Fed. R. Civ. P. plaintiff will move this Court before the Honorable Colleen McMahon, United States District Judge, at the United States Courthouse, 500 Pearl Street New York, New York, for partial summary judgment against defendants Union Pacific Railroad Company and Evergreen Marine Corp. Plaintiff seeks an order, judgment and decree holding that:

A. In accordance with the Second Circuit’s holding in *Sompo Japan Insurance Co. of America v. Union Pacific Railroad Co.*, 456 F.3d 54 (2d Cir. 2006), and Judge McMahon’s decision on remand in the same case, *see Sompo*, No. 03-1604(CM),

2007 WL 2230091 (S.D.N.Y. August 2, 2007) defendants' liability herein is governed by the Carmack Amendment to the Interstate Commerce Act of 1887 ("Carmack"), Act of June 29, 1906, ch. 3591, 34 Stat. 584 (1906) (current version at 49 U.S.C. § 11706);

B. Defendants did not comply with the conditions precedent for limitation under the Staggers Act or Carmack;

C. All defenses pursuant to which defendants seek to exclude or limit their liability are stricken;

D. In the alternative plaintiff is entitled to recovery based on \$250,000.00 per container as outlined in Point VI of plaintiff's memorandum of law;

E. Defendants are jointly and severally liable to plaintiff;

F. Plaintiff is entitled to such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that defendants' opposition papers are to be filed and served on plaintiff's counsel in accordance with the Individual Practices of the Honorable Colleen McMahon.

Dated: New York, New York  
February 4, 2008

LAW OFFICES,  
DAVID L. MAZAROLI

*s/David L. Mazaroli*

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